

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: Squad #11	CCRB Case #: 201411026	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/15/2014 5:25 PM	Location of Incident: Inside § 87(2)(b)	Precinct: 40	18 Mo. SOL 4/15/2016	EO SOL 4/15/2016	
Date/Time CV Reported Wed, 10/15/2014 10:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/28/2014 4:54 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Israel Alcantara	19894	952390	HBXQIRT
2. POM Hector Alvarez	13331	952406	HBXQIRT
3. SGT Joseph Garcia	01010	936645	HBXQIRT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Neung Kim	14278	952933	HBXQIRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Israel Alcantara	Abuse: PO Israel Alcantara stopped § 87(2)(b)	
B.POM Hector Alvarez	Abuse: PO Hector Alvarez stopped § 87(2)(b)	
C.POM Israel Alcantara	Abuse: PO Israel Alcantara frisked § 87(2)(b)	
D.POM Israel Alcantara	Abuse: PO Israel Alcantara searched § 87(2)(b)	
E.SGT Joseph Garcia	Force: Sgt. Joseph Garcia used physical force against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	
G. Officers	Abuse: Officers entered § 87(2)(b) in the Bronx.	
H. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b) and § 87(2)(b)	
I. Officers	Force: Officers restricted § 87(2)(b) breathing.	

Case Summary

On October 15, 2014, at approximately 5:25 pm, PO Israel Alcantara and PO Hector Alvarez of Housing Bronx-Queens IRT handcuffed § 87(2)(b) in the § 87(2)(b) § 87(2)(b) in the Bronx for allegedly smoking marijuana (**Allegation A and B**). PO Alcantara then allegedly frisked § 87(2)(b) and searched his pockets (**Allegation C and D**). PO Alcantara then removed the handcuffs from § 87(2)(b) and told him to go back into his apartment. § 87(2)(b) returned to his apartment and then Sgt. Joseph Garcia, also from Housing Bronx-Queens IRT, and numerous other officers arrived in the hallway and pulled § 87(2)(b) out of the apartment (**Allegation E and F**). Then the officers allegedly pulled § 87(2)(b) girlfriend § 87(2)(b) his friend § 87(2)(b) and § 87(2)(b) s daughter § 87(2)(b) out of the apartment (**Allegation F cont'd**). Six officers allegedly entered the apartment in order to pull the civilians out of the apartment (**Allegation G**). § 87(2)(b) told the officers that they could not pull them out and two officers said, “We are the police and we can do whatever the fuck we want,” (**Allegation H**). Officers pushed § 87(2)(b) to the ground and allegedly placed their bodyweight on § 87(2)(b) such that it was difficult for him to breathe (**Allegation I**). Several officers also allegedly said, “Shut the fuck up. Stay still,” (**Allegation H cont'd**). Officers then allegedly hit § 87(2)(b) and § 87(2)(b) all over their bodies and an officer allegedly slammed § 87(2)(b) s head into the wall (**Allegation F cont'd**). An officer then allegedly dragged § 87(2)(b) down the stairs by his feet, hitting his head on the way down, until the second floor, when three officers allegedly lifted § 87(2)(b) off the ground and slammed him back down onto the ground (**Allegation F cont'd**). § 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 § 87(2)(b). § 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 § 87(2)(b). § 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] § 87(2)(b) and § 87(2)(b) all received medical treatment at § 87(2)(b) for various injuries allegedly sustained during the incident. § 87(2)(b) provided a cell phone video of a portion of the incident and there was NYCHA surveillance video of § 87(2)(b) and § 87(2)(b) s removal from the § 87(2)(b) floor of the apartment building (see Video 1 and 2 and Board Review 01 and 02). § 87(2)(b)

Mediation, Notice of Claim, and Criminal Histories

This complaint was ineligible for mediation. On November 10, 2014, § 87(2)(b) and § 87(2)(b) all filed notices of claim with the Comptroller’s Office. These claims allege, among other things, assault, battery, improper and excessive use of force, conspiracy, false arrest, unjust imprisonment, and gross negligence and seek an undisclosed amount of money as redress (see Board Review 04). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and the first complaint to involve § 87(2)(b) (see Board Review 07 and 08).
- This is the third CCRB complaint to involve § 87(2)(b) § 87(2)(b)
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§ 87(2)(b)
- This is the second CCRB complaint to involve § 87(2)(b) § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- PO Alcantara has been a member of service of two years and there are no substantiated allegations against him.
- PO Alvarez has been a member of service for two years and this is the first CCRB complaint against him.
- Sgt. Garcia has been a member of service for 10 years and this is the first CCRB complaint against him.

Findings and Recommendations

Explanation of Subject Officer Identification

The subject officers of Allegations F-I could not be identified. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g). The video surveillance footage from the building's lobby showed that there were at least 36 officers inside of the building at the time of § 87(2)(b)s and § 87(2)(b) arrest (see Video 1 and Board Review 02). The Event associated with the incident noted that officers from the 40th Precinct, PSA 7, and Housing Impact responded to the incident (see NYPD Documents 03). Sgt. Garcia was the only officer interviewed who acknowledged being at the door to the apartment when the civilians started to be pulled out. § 87(2)(g)

§ 87(2)(g)

Allegations not Pleaded

§ 87(2)(g)

- **Allegation A) Abuse of Authority: PO Israel Alcantara stopped** § 87(2)(b)
- **Allegation B) Abuse of Authority: PO Hector Alvarez stopped** § 87(2)(b)

It is not in dispute that PO Alcantara and PO Alvarez stopped § 87(2)(b) to investigate whether or not he had been smoking marijuana, and § 87(2)(b) started yelling for his family, who arrived and intervened and a call for assistance was made as a result of the crowd.

§ 87(2)(b) stated that he was sitting on the stairs next to a window in the § 87(2)(b) hallway when PO Alcantara approached him, immediately handcuffed § 87(2)(b) and asked if he was smoking. § 87(2)(b) replied by asking PO Alcantara if he had seen him smoking. Within a few minutes, the handcuffs were removed, and § 87(2)(b) was allowed to re-enter his apartment. § 87(2)(b) denied that he or § 87(2)(b) were smoking anything in the hallway and § 87(2)(b) denied smelling marijuana or cigarette smoke in the hallway when she came outside of her apartment.

Both PO Alcantara and PO Alvarez stated that they decided to approach § 87(2)(b) because they smelled marijuana that seemed to emanate from § 87(2)(b)'s location. PO Alvarez stated that he observed § 87(2)(b) smoking a small cigarette when he approached him from the front, though PO Alcantara never saw § 87(2)(b) smoking, even though the odor of marijuana grew strong when he came down onto the § 87(2)(b). Both officers stated that because § 87(2)(b) resisted being handcuffed and his family members came outside, a call for backup was made, and they were able to put him in handcuffs. Both officers also stated that they observed an empty glassine on the ground next to § 87(2)(b). Even though three ziplock baggies of marijuana were found on § 87(2)(b) and vouchered as arrest evidence (see NYPD Documents 01), according to PO Alvarez, these were recovered at the stationhouse during arrest processing; the vouchers do not note who recovered them. PO Alcantara stated that the initial marijuana cigarette was recovered, whereas PO Alvarez, § 87(2)(b) arresting officer, stated that it was not and the complaint and arrest reports note that it was not recovered (see NYPD Documents 02). The officers corroborated that they released § 87(2)(b) from handcuffs to de-escalate the situation with the family members. When Sgt. Garcia arrived, he made the decision to place § 87(2)(b) under arrest.

Patrol Guide Procedure 212-11 requires that officers must reasonably suspect an individual has committed, is committing, or is about to commit a crime in order to stop him (see Board Review 11).

§ 87(2)(g)

§ 87(2)(b)

- **Allegation C) Abuse of Authority: PO Israel Alcantara frisked** § 87(2)(b)
- **Allegation D) Abuse of Authority: PO Israel Alcantara searched** § 87(2)(b)

§ 87(2)(b) alleged that after he was handcuffed and § 87(2)(b) had come out into the hallway, PO Alcantara frisked his waistband, pants pockets, and legs and then reached his hand into § 87(2)(b) right and left pants pockets. Immediately afterwards, PO Alcantara removed § 87(2)(b) handcuffs and told him to go back into the apartment. § 87(2)(b) and § 87(2)(b) then walked back into the apartment together. § 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) witnessed this frisk and search.

§ 87(2)(b) stated that there were three officers outside when she walked into the hallway and that all three officers tapped § 87(2)(b) front and back pants pockets and then placed their hands inside these pockets. § 87(2)(b) stated that § 87(2)(b) walked back into the apartment as she walked out into the hallway.

§ 87(2)(b) did not allege that § 87(2)(b) was frisked or searched, but stated that he went back into the apartment before § 87(2)(b) was finished being handcuffed and before § 87(2)(b) went out into the hallway.

Both PO Alvarez and PO Alcantara denied frisking or searching § 87(2)(b).
Patrol Guide Procedure 212-11 requires that officers reasonably suspect a civilian is armed in order to conduct a frisk and that officers only search a civilian if a frisk reveals an object on his person to be a weapon (see Board Review 11).

§ 87(2)(g)

• **Allegation E) Force: Sgt. Joseph Garcia used physical force against § 87(2)(b)**

It is undisputed that Sgt. Garcia pulled § 87(2)(b) out of § 87(2)(b)'s apartment. § 87(2)(g)

§ 87(2)(b) stated that he did not pull his hands away, swing his arms, or move his legs when PO Alcantara placed him into handcuffs. Then § 87(2)(b) came out of the apartment, told the officers that § 87(2)(b) sometimes stayed in the apartment, and PO Alcantara removed his handcuffs. PO Alcantara said that he was free to go and then § 87(2)(b) returned to § 87(2)(b)'s apartment. Sometime later, an officer came to the door and instructed § 87(2)(b) to step outside. § 87(2)(b) refused and this officer grabbed her arm and pulled her out into the hallway. § 87(2)(b) approached the door to ask what the officer was doing to § 87(2)(b) and two officers, one of them identified by the investigation as Sgt. Garcia, grabbed § 87(2)(b) arms and pulled him out of the apartment. § 87(2)(b) stated that he leaned backwards to avoid being pulled out and both of these officers, including Sgt. Garcia, instructed him to stop resisting. § 87(2)(b) stated that § 87(2)(b) did not attempt to prevent PO Alcantara from handcuffing him.

PO Alvarez and PO Alcantara both stated that when they first attempted to handcuff § 87(2)(b) he refused to bring his hands behind his back after they stopped him. PO Alcantara stated that § 87(2)(b) moved his shoulders back and forth and waved his hands above his head. PO Alvarez stated that each of the officers grabbed one of his hands and attempted to bring them behind his back, but § 87(2)(b) tensed up and prevented the officers from bringing his arms behind his back prior to backup arriving.

Sgt. Garcia stated that when he arrived to the § 87(2)(b) hallway he spoke with PO Alcantara and PO Alvarez who described their stop of § 87(2)(b) and their difficulty in placing § 87(2)(b) into handcuffs, and that when they could not find marijuana, they decided to release him. Sgt. Garcia determined that § 87(2)(b) should be placed under arrest for § 87(2)(a) 160.50. § 87(2)(b). Sgt. Garcia went over to the apartment door and told § 87(2)(b) that he was going to be placed under arrest. § 87(2)(b) said, "I'm not going to go back." Sgt. Garcia grabbed § 87(2)(b) and, although the civilians tried pulling them apart, Sgt. Garcia was able to pull him out of the apartment, at which time other officers placed him under arrest.

Patrol Guide Procedure 203-11 affords officers the minimum force necessary to place a civilian under arrest (see Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

- **Allegation F) Force: Officers used physical force against** § 87(2)(b) **and** § 87(2)(b)
- **Allegation G) Abuse of Authority: Officers entered** § 87(2)(b) **, in the Bronx.**
- **Allegation I) Force: Officers restricted** § 87(2)(b) **breathing.**

It is not in dispute that § 87(2)(b) found a Conductive Energy Device (Taser) and the cap device belonging to the uniform cap of PO Neung Kim. § 87(2)(b) told the CCRB that these items were found inside her apartment after the incident.

§ 87(2)(b) and § 87(2)(b) all stated that § 87(2)(b) was pulled out of the apartment first. Subsequently, § 87(2)(b) alleged that he was pushed to the ground by officers he did not see, who put their body weight on him in a fashion that made it difficult for him to breathe. § 87(2)(b) did not allege that there was any force used against § 87(2)(b) beyond him being pulled out of the apartment and § 87(2)(b) alleged that officers hit § 87(2)(b).

§ 87(2)(b) alleged that officers hit him all over his body while he was curled up on the ground in the fetal position, but he did not recall who hit him or where on his body he was hit. § 87(2)(b) alleged that the same officer who pulled him out of the apartment also dragged him down the stairs by his feet so that his head hit each and every step on the way down. At the second floor, this officer and two more, lifted him up and threw him back down on the ground.

§ 87(2)(b) stated that the officers stopped using force once they were in range of the surveillance cameras. § 87(2)(b) did not allege that any force was used against § 87(2)(b) and § 87(2)(b) only said that officers hit § 87(2)(b) while he was in the hallway.

§ 87(2)(b) alleged that six officers entered her apartment by about fifteen steps in order to remove her, § 87(2)(b) and § 87(2)(b) from the apartment (something neither § 87(2)(b) nor § 87(2)(b) alleged) and she was subsequently pulled out of the apartment by two light-skinned males. In the hallway, § 87(2)(b) alleged that officers she did not describe “beat” § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that she saw “a lot” of officers enter her apartment in order to remove § 87(2)(b) and § 87(2)(b) after she was taken into the hallway. § 87(2)(b) stated that § 87(2)(b) was only removed from the apartment after § 87(2)(b) and § 87(2)(b) were escorted in handcuffs downstairs and outside of the apartment building.

§ 87(2)(b) a neighbor, opened her door and witnessed a portion of the incident and § 87(2)(g) she could not describe any of the officers who went into § 87(2)(b)'s apartment, or the officers who hit § 87(2)(b). § 87(2)(b) also alleged that an officer she could not describe slammed § 87(2)(b)'s head against the wall next to her apartment (something that § 87(2)(b) did not allege).

§ 87(2)(b) and § 87(2)(b) all received medical treatment as a result of this incident. § 87(2)(b) complained of pain to the left side of his head and lower back and felt dizzy as a result of a physical altercation with NYPD officers who jumped on top of him and threw him to the ground after being grabbed out of his home. He had a minor contusion to his forehead, neck, back, and left knee. He received an anti-inflammatory injection and a tablet of Ibuprofen (see blue medical folder). When § 87(2)(b) saw EMTs at the station house, he complained of body pain but denied loss of consciousness, neck pain, and back pain. However, he stated to § 87(2)(b) that after being beaten with closed fists and batons for 20 minutes and being picked up and slammed to the ground, he lost consciousness for ten minutes and lost one of

his lower left molars and complained of a headache and pain to his head, neck, left wrist, left shoulder, knee, and palm. His § 87(2)(b) records noted that although he had multiple missing teeth, there was no active bleeding or pain in his jaw when he opened it. He was given an injection of an anti-inflammatory (see blue medical folder). § 87(2)(b) stated that as a result of being assaulted by the police she had pain in her shoulder, back, left foot, and right arm. She received two tablets of Ibuprofen (see blue medical folder).

None of the officers interviewed could see the details of who handcuffed § 87(2)(b) or § 87(2)(b) given the dozens of officers at the doorway and the family members who were intervening and trying to prevent the arrests. It was possible they were brought to the ground, but none of the officers punched, kicked, or otherwise struck any of the civilians. They did not see any officers pile on top of § 87(2)(b) or try to restrict his breathing. They did not enter or see officers enter the apartment. PO Kim, who denied entering the apartment, did not know at what moment she lost her cap device, but did not realize it was gone until she returned to her command. She speculated it came off in the hallway. Sgt. Garcia, who denied entering the apartment aside from when he was pulled over the threshold, did not realize he had lost his Taser until the PSA 7 Commanding Officer asked him if he had it later at the station house.

§ 87(2)(g)

- **Allegation H) Discourtesy: Officers spoke discourteously to** § 87(2)(b) **and** § 87(2)(b) § 87(2)(b) stated to the CCRB that during the struggle at the door of the apartment, officers § 87(2)(b) did not see allegedly said, “Shut the fuck up. Stay still.” Neither § 87(2)(b) nor § 87(2)(b) corroborated the alleged discourtesy. In § 87(2)(b)s statement to Housing Investigations, § 87(2)(b) did not make this allegation and provided different discourtesy allegations, such as, “Where the fuck is he at?” and “I’ll fucking Tase you.” In his statement to IAB, he alleged discourteous language such as, “Come over here you fucking smart ass,” and “I don’t give a fuck if you can’t breathe.” (Board Review 12) § 87(2)(b) alleged that the same two officers who pulled him and § 87(2)(b) out of the apartment said, “We are the police and we can do whatever the fuck we want.” Neither § 87(2)(b) nor § 87(2)(b) alleged this discourtesy.

All of the officers interviewed denied discourteous language was used.

§ 87(2)(g)

Pod: 11

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date